

KEYWORD: Financial

DIGEST: Between 2001 and 2006, Applicant accrued 20 delinquent debts in the approximate amount of \$95,000. During this time, he was totally disabled because of a work-related injury. Before the injury, he had no financial problems. He returned to work in 2006 shortly after his physician cleared him, retained a credit counseling agency, satisfied eight of the delinquencies in the amount of \$10,000, and filed for Chapter 13 bankruptcy. He is paying the remaining debts through the plan. Applicant has mitigated ths financial considerations security concern. Clearance is granted.

CASENO: 07-00147.h1

DATE: 09/06/2007

DATE: September 6, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 07-00147
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

Peggy L. Moore, Esq.

**SYNOPSIS**

\_\_\_\_\_ Between 2001 and 2006, Applicant accrued 20 delinquent debts in the approximate amount of \$95,000. During this time, he was totally disabled because of a work-related injury. Before the injury, he had no financial problems. He returned to work in 2006 shortly after his physician cleared him, retained a credit counseling agency, satisfied eight of the delinquencies in the amount of \$10,000, and filed for Chapter 13 bankruptcy. He is paying the remaining debts through the plan. Applicant has mitigated the financial considerations security concern. Clearance is granted.

### **STATEMENT OF THE CASE**

On April 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on May 10, 2007, admitting the allegations and requesting a hearing.

The case was assigned to me on June 22, 2007. On July 6, 2007, DOHA issued a notice of hearing scheduling it for August 1, 2007. During the hearing, I received four government exhibits, nine Applicant exhibits, and the testimony of three Applicant witnesses. DOHA received the transcript on August 10, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ The SOR admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 46-year-old divorced man with two adult children. He is a veteran of the U.S. Coast Guard, serving from 1980 through his disability retirement in 1998. After leaving the Coast Guard, Applicant began working as a driver for an armored car delivery company.

One day in October 2001, the driver of a work vehicle in which Applicant was a passenger lost control, began hydroplaning, and crashed.<sup>1</sup> Consequently, Applicant suffered serious, soft tissue injuries to his neck, knee, and left shoulder, rendering him unable to work.

Despite an intensive treatment regimen, including prescription painkillers, multiple cortisone injections, physical rehabilitation, and shoulder surgery, Applicant remained unable to work for nearly five years. He had no earnings during this period.<sup>2</sup> For the first two years of his disability, his income loss was partially offset by worker's compensation benefits.<sup>3</sup> By 2003, however, he had

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<sup>1</sup>Answer at 1; Tr. 23.

<sup>2</sup>Applicant's company had no light duty positions (Tr. 83).

<sup>3</sup>Tr. 60-61.

exhausted these benefits.<sup>4</sup> From October 2003 through February 2006, Applicant's only income was his Coast Guard pension.<sup>5</sup>

At or about the time of the accident, Applicant was helping both of his children pay their college tuition, and was paying child support.<sup>6</sup> In 2003, his mother suffered a disability that prevented her from working.<sup>7</sup> Applicant then began providing her approximately eighty to one hundred dollars per month in financial support.<sup>8</sup>

As Applicant disability persisted, he gradually began accruing delinquencies. He managed to make some payments through a credit card insurance program, but the benefits expired before he was cleared to return to work.<sup>9</sup> Before the injury, he had no financial problems.<sup>10</sup> By February 2006, when his doctor cleared him to return to work, he was indebted to 20 creditors in the approximate amount of \$96,000. All of the delinquencies were either credit card accounts or lines of credit. Eight accounts were not included in the SOR. SOR subparagraphs 1.c, 1.d, and 1.n are duplicates.

After being cleared to work, Applicant left his old job, and began working in March 2007 as a security guard. He has remained engaged in this line of work since that time.

As soon as Applicant returned to work, he began paying his delinquencies. Between March 2006 and January 2007, he made \$10,000 of debt payments, satisfying eight creditors, unlisted on the SOR, in their entirety.<sup>11</sup> For approximately six months during this period, beginning in June 2006, he utilized a credit counseling company to help him adhere to a debt repayment plan.<sup>12</sup>

In January 2007, Applicant sought legal counsel after one of his creditors threatened to sue him.<sup>13</sup> In March 2007, he filed for Chapter 13 bankruptcy protection.<sup>14</sup> Two months later, the court appointed a trustee to administer Applicant's bankruptcy plan payments.<sup>15</sup> Under the plan, approximately half of the delinquencies will be discharged, and Applicant is to pay \$745 per month

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<sup>4</sup>*Id.*

<sup>5</sup>Tr. 60.

<sup>6</sup>Tr. 62, 71.

<sup>7</sup>Exhibit H; Tr. 62.

<sup>8</sup>*Id.*

<sup>9</sup>Tr. 91.

<sup>10</sup>Tr. 63.

<sup>11</sup>Tr. 41, 96.

<sup>12</sup>Tr. 40-41, 94; Exhibit A.

<sup>13</sup>Tr. 41.

<sup>14</sup>Exhibit D; Tr. 42.

<sup>15</sup>Exhibit F.

for 60 months. He has been making payments since June 2007. In July 2007, the court entered a wage order to enable payments to be deducted from his paycheck. All of the delinquencies in the SOR are included in the bankruptcy plan.

Applicant is highly respected on the job. At the hearing, a coworker characterized him as an upstanding citizen who is honest and hardworking.<sup>16</sup> His supervisor characterized him as an excellent employee with sound judgment and decision-making skills.<sup>17</sup>

## POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guideline is raised:

Guideline F - Financial Considerations: Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly

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<sup>16</sup>Tr. 23.

<sup>17</sup>Tr. 28.

consistent with the national interest.”<sup>18</sup> In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## CONCLUSIONS

Applicant’s history of financial problems triggers the application of Financial Considerations Disqualifying Conditions (FC DC) 19(a): *inability or unwillingness to satisfy debts*, FC DC 19(c): *a history of not meeting financial obligations*, and FC DC 19(e): *consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*.

Applicant’s financial problems did not begin until he was seriously disabled by an on-the-job injury which prevented him from working for nearly five years. At the same time he was disabled, his mother became disabled, compelling him to attempt to help her financially, and he was helping his two children with their college tuition.

Shortly after Applicant was cleared to begin working, he retained a credit counseling agency, satisfied eight of his delinquencies in the amount of \$10,000, and arranged to pay the remainder through a Chapter 13 bankruptcy plan. Although he has only made payments through the plan for three months, he had been paying down his debts for 16 months before he began making payments through the plan. Financial Considerations Mitigating Conditions (FC MC) 20(b): *the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*, and *the individual acted responsibly under the circumstances*, FC MC 20(c): *the person has received or is receiving counseling for the problem, and/or there are clear indications that the problem is being resolved or is under control*, and FC MC (d): *the creditor initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, apply. Applicant has mitigated the financial considerations security concern.

### **Whole Person Concept**

Applicant accrued a tremendous amount of delinquencies between 2001 and 2006. Although he has been satisfying them for approximately 18 months, he continues to owe more than \$50,000. No record evidence exists that any of these debts originated from irresponsible spending. Instead, they accrued from his inability to support himself because of a disabling on-the-job injury. Since returning to work, his efforts at rehabilitating his finances have been exemplary, and his financial situation appears to be well in control. These positive factors substantially outweigh the negative ones. Evaluating this case in the context of the whole-person concept, I conclude that Applicant has mitigated the security concern.

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<sup>18</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

**FORMAL FINDINGS**

Paragraph 1 – Guideline F: FOR APPLICANT

Subparagraph 1.a-1.n: FOR APPLICANT

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry  
Administrative Judge